

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LARRY D. BLASOR)	
Claimant)	
VS.)	
)	Docket No. 1,035,906
SCHNEIDER NATIONAL, INC.)	
Respondent)	
AND)	
)	
LIBERTY MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the February 19, 2009, Award entered by Special Administrative Law Judge Marvin Appling. The Workers Compensation Board heard oral argument on June 24, 2009.

APPEARANCES

Angela Trimble of Pittsburg, Kansas, appeared for claimant.¹ Kip A. Kubin of Kansas City, Missouri, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for a June 30, 2007, accident and resulting injury. In the February 19, 2009, Award, Judge Appling found the parties were not covered by the Workers Compensation Act. Consequently, the Judge denied claimant's request for compensation. Nevertheless, the Judge also found: claimant sustained an accidental injury on June 30, 2007, which arose out of and in the course of his employment with respondent; claimant's

¹ It appears the Award erroneously named William L. Phalen as claimant's attorney.

average weekly wage was \$900; claimant was not entitled to receive unauthorized medical benefits as claimant did not make a proper request; claimant was not entitled to additional weeks of temporary total disability; and the nature and extent of claimant's injury was not an issue due to the other findings.

Claimant requests the Board to overturn the Award and grant him workers compensation benefits, including medical treatment, the payment of medical bills, temporary total disability compensation, and permanent disability benefits for a 15 percent whole person functional impairment. Claimant maintains there is jurisdiction under the Kansas Workers Compensation Act as his employment contract was formed in Kansas when he accepted respondent's job offer during a telephone conversation while at his home in Cherryvale, Kansas.

Respondent, however, requests the Board to affirm the Award. It argues the Kansas Workers Compensation Act does not have jurisdiction over this claim for two reasons. First, respondent argues this claim is not covered by the Act as the last acts necessary to form the contract of employment and complete claimant's hire occurred in Texas. In the alternative, it argues that it accepted claimant's offer and, therefore, the contract was formed in Wisconsin. Respondent also contends claimant's request for additional temporary total disability benefits should be denied as there is no medical evidence to support that claim. Regarding the request for the payment or reimbursement of medical bills, respondent asserts the bills are not in the record as they were attached to claimant's submission letter and were not offered at any hearing or deposition transcript, nor is there any supporting testimony regarding them.

The issues before the Board on this appeal are:

1. Was claimant's contract of employment formed in Kansas, which would bring this claim under the jurisdiction of the Kansas Workers Compensation Act?
2. If so, what is claimant's average weekly wage?
3. Is claimant entitled to any additional weeks of temporary total disability benefits?
4. What is the nature and extent of claimant's injury and impairment?
5. Is claimant entitled to medical benefits?
6. Are the medical bills claimant attached to his submission letter part of the record?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

Claimant injured his back on June 30, 2007, while driving a truck for respondent when his air seat slammed to the floor. There is no dispute the accident occurred outside the state of Kansas. There is a dispute, however, whether claimant's contract of employment was formed in Kansas.

It is undisputed that claimant initially contacted respondent on April 25, 2007, when he submitted a job application over the Internet. On May 9, 2007, respondent's Pamela M. Lardinois, a recruiter for respondent, telephoned claimant from Wisconsin and conducted a telephone interview. Respondent contends it offered claimant a job conditioned upon his successfully completing a drug screen, record checks with the Department of Transportation (DOT), a DOT physical, a driving test and orientation.

Conversely, claimant contends he did not recall Ms. Lardinois using the term "conditional" in their May 9, 2007, conversation. But he did acknowledge that Ms. Lardinois told him he would have to take a driving test and pass a drug screen. Nevertheless, on May 25, 2007, claimant notified respondent that he had decided to stay with his employer. Consequently, the terms of the May 9, 2007, offer and the question of who accepted whose offer in that telephone conversation are not determinative.

On June 13, 2007, claimant telephoned respondent about a job. Claimant initially testified he made the telephone call from his cell phone and that he did not know where he was when he made the call. But later he testified he made the call from his home in Cherryvale, Kansas. Claimant testified, in part:

Q. (Mr. Kubin) Okay, just so I understand kind of how that conversation went, you contacted them?

A. (Claimant) Yes.

Q. You told them you wanted to go to work for [respondent]?

A. Um-hum.

Q. They said okay?

A. That's what I recall sir, yes.

Q. Then they sent you the fax down to tell you where to go in Texas, is that right?

A. Yes.

Q. So you offered to go to work for them and they said fine?

A. Yes, sir, that's what I recall.²

That testimony indicates respondent accepted claimant's offer to work for respondent.³ And should that be true, then claimant's offer was accepted by Ms. Lardinois who was in Wisconsin.

Before the Kansas Workers Compensation Act has jurisdiction over an accident that occurs outside the state, either the contract of employment had to be formed within the state or the state must be the worker's principal place of employment. K.S.A. 44-506 provides:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: *Provided*, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: *Provided, however*, That the workmen's compensation act shall apply to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of the state of Kansas and to all projects, buildings, constructions, improvements and property belonging to the United States of America within said exterior boundaries as authorized by 40 U.S.C. 290, enacted June 25, 1936.

In *Shehane*, the Kansas Court of Appeals held:

The basic principle is that a contract is "made" when and where the last act necessary for its formation is done. *Smith v. McBride & Dehmer Construction Co.*, 216 Kan. 76, 530 P.2d 1222 (1975). When that act is the acceptance of an offer during a telephone conversation, the contract is "made" where the acceptor speaks his or her acceptance. *Morrison v. Hurst Drilling Co.*, 212 Kan. 706, Syl. ¶ 1, 512 P.2d 438 (1973); see Restatement (Second) of Contracts, § 64, Comment c (1974).⁴

² P.H. Trans. at 26, 27.

³ The Board is aware that Ms. Lardinois indicated claimant accepted a conditional offer to work during their June 2007 telephone conversation but that was a legal conclusion and laypeople may not be well versed in the legal nuances of offers and acceptance.

⁴ *Shehane v. Station Casino*, 27 Kan. App. 2d 257, 261, 3 P.3d 551 (2000).

The Board concludes it is more probably true than not that claimant contacted respondent on June 13, 2007, and offered to work for it. Accordingly, claimant has failed to prove that the last act necessary in forming his employment contract with respondent occurred in Kansas.

Furthermore, arguably respondent accepted claimant's offer to work conditioned upon his successfully completing a driver's test and a drug screen, which were to be administered in Texas. In *Speer*⁵ the Kansas Court of Appeals analyzed similar facts and determined that driving tests, drug screening and orientation were conditions precedent that had to be successfully completed before the employment contract was formed. The Court of Appeals reasoned:

Different from the facts of *Shehane*, there is no written contract here indicating that the drug test, orientation, and other required paperwork were conditions subsequent to Speer's employment with Sammons. Moreover, it is apparent that Sammons would not have given Speer the keys to one of its trucks unless Speer had first satisfied these conditions. Speer admitted in his deposition testimony that passing the drug test was a condition that he had to meet before he would be hired. One might characterize Sammons' offer to Speer as follows: Sammons says to Speer, "Speer, if you will take and pass a drug test, complete orientation, fill out and sign required paperwork, Sammons will hire you." The taking and passing of the drug test and completing the other conditions must exist as a fact before there is any liability on Sammons to hire Speer. This was a condition precedent rather than a condition subsequent. Black's Law Dictionary 312 (8th ed.2004) defines a condition precedent as "[a]n act or event, other than a lapse of time, that must exist or occur before a duty to perform something promised arises." Even if Sammons' representative Otis communicated a counteroffer to Speer during the telephone conversations, this counteroffer had conditions precedent that were not fulfilled until Speer completed the drug test, orientation, and paperwork while he was in Montana.

In summary, the satisfaction of these conditions was a prerequisite to the employment contract coming into existence.⁶

Consequently, assuming claimant accepted a job offer from respondent, the contract was conditional upon claimant successfully completing orientation and certain tests in Texas.

The Board concludes claimant has failed to prove his contract was formed in Kansas. Likewise, the evidence fails to establish that Kansas was the principal place of his employment with respondent. Consequently, claimant's June 2007 accident does not fall

⁵ *Speer v. Sammons Trucking*, 35 Kan. App. 2d 132, 128 P.3d 984 (2006).

⁶ *Id.* at 144, 145.

under the jurisdiction of the Kansas Workers Compensation Act and that finding should be affirmed and the remaining issues are moot.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁷ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, the Board affirms the finding set forth in the February 19, 2009, Award entered by Special Administrative Law Judge Appling that claimant's June 30, 2007, accident does not fall under the jurisdiction of the Kansas Workers Compensation Act. Consequently, claimant's request for workers compensation benefits is denied.

The Board adopts the order assessing administrative costs set forth in the Award.

IT IS SO ORDERED.

Dated this ____ day of July, 2009.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Angela Trimble, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Thomas Klein, Administrative Law Judge
Marvin Appling, Special Administrative Law Judge

⁷ K.S.A. 2008 Supp. 44-555c(k).